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Publications



NATIONAL ENERGY BOARD REASONS FOR DECISION

In the Matter of Applications under
the National Energy Board Act

of

L b-b Foothills Pipe Lines (Alta.) Ltd.

For the Taking of Additional Lands

June 23, 1980

NATIONAL ENERGY BOARD

IN THE MATTER of applications dated the 24th and 29th days of April, 1980 by Foothills Pipe Lines (Alta.) Ltd. for Authority to take Additional Lands required for the Construction, Maintenance and Operation of a Pipeline pursuant to section 74 of the National Energy Board Act.

Northern Pipeline Agency File No. 8280.

Heard at the Town of Claresholm, in the Province of Alberta, on the 2nd day of June, 1980.

BEFORE:

W.A. Scotland, Designated Officer,
Northern Pipeline Agency,

pursuant to the powers, duties and functions delegated to him by the National Energy Board in its Order No. NPO-1-78 dated the 27th day of July 1978.

APPEARANCES

G.E. ANDERSON Foothills Pipe Lines (Alta.) Ltd.

ED NELSON Private Citizen and a Director of Waldron Grazing
Co-operative Limited

L.G. GANNE Northern Pipeline Agency

BACKGROUND

The National Energy Board Act (NEB Act) provides, under Section 73, that a pipeline company may without the consent of the owner take lands for right-of-way up to a maximum breadth of sixty feet (18.288 m). Under Section 74⁽¹⁾ of the same Act, a company may apply to the National Energy Board (the Board) for authority to take additional lands without the consent of the owner if such lands are required for the efficient construction, maintenance or operation of a pipeline or for constructing or taking any works or measures ordered by the Board.

The Northern Pipeline Act was enacted to establish the Northern Pipeline Agency (the Agency) to facilitate the planning and construction of a pipeline which has become known as the Alaska Highway Gas Pipeline (AHGP). Foothills Pipe Lines (Alta.) Ltd. [Foothills (Alta.)] is the company which will own and operate the segments of the AHGP to be constructed in Alberta. Subsection 6(1) of the Northern Pipeline Act provides for the delegation of certain powers, duties and functions of the Board under the NEB Act to the Designated Officer of the Northern Pipeline Agency. The Board by its Order No. NPO-1-78 ⁽²⁾ delegated to William Alexander Scotland, Designated Officer and Deputy Administrator of the Northern Pipeline Agency its powers, duties and functions in respect of certain sections of the NEB Act including section 74 for the Canadian section of the AHGP. This hearing was conducted pursuant to those delegated powers.

(1) See Appendix I

(2) See Appendix II

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THE APPLICATIONS

Foothills (Alta.) applied to the Board in three separate applications for authority to take additional lands along its proposed right-of-way within Zone 7⁽³⁾ between kilometre posts 202.8 and 246.8.

The applications effectively would provide Foothills (Alta.) with a permanent right-of-way of 27 metres (88.6 feet) in breadth except for one small section where temporary working space was requested.

Foothills (Alta.) classified the additional lands applied for into three categories of linear land use:

Schedule "A" lands, being additional right-of-way on which Foothills (Alta.) may carry on pipeline construction and maintenance including ditching and installation of pipeline.

Schedule "B" lands, being additional right-of-way providing permanent working space adjacent to the sixty foot right-of-way, for which provision is made in section 73 of the NEB Act. The permanent working space completely overlaps an existing right-of-way of The Alberta Gas Trunk Line Limited (AGTL). The activities Foothills (Alta.) wishes to conduct on this permanent working space are the normal pipeline construction and maintenance activities limited to surface use. Ditching and laying pipe in the ditch can not be done.

(3) Zone 7 is described in schedule I to the Northern Pipeline Act as the route from Caroline, Alberta to the Alberta-British Columbia Border near Coleman, Alberta.

Schedule "C" lands, being one small (0.032 ha) tract which encroaches on a pipeline right-of-way of Hudson's Bay Oil and Gas Limited, are to be used for temporary surface working space which will be released when construction of the pipeline is completed and the Board has granted a leave to open order.

Foothills (Alta.) further applied for an additional 0.732 ha parcel to be acquired by grant of easement to facilitate the connection of its pipeline with the existing AGTL pipeline.

EVIDENCE

The three applications are for tracts of land within the same portion of right-of-way and were heard together as one application.

Foothills (Alta.) stated that it required the additional lands because the lands, sixty feet in breadth, which are permitted to be taken for right-of-way of a pipeline under section 73 of the NEB Act, are insufficient to allow Foothills (Alta.) to efficiently construct, maintain and operate its pipeline in accordance with accepted practices of the pipeline industry. Foothills (Alta.) requires a total of 27 metres of right-of-way, which includes the additional lands, for construction of the pipeline. This right-of-way will be used in a manner represented by Figure 1.

Foothills (Alta.) stated that AGTL is able to acquire 100 foot (30.48m) rights-of-way in Alberta for similar diameter pipelines.

The Alberta Department of Energy and Natural Resources, a major landholder affected by these applications, stated in a letter to the Agency that it did not have any objection to the additional width.

The Waldron Grazing Co-operative Limited, another major owner/occupant in a letter from its solicitor, did not oppose the taking of additional lands and believes that taking the additional right-of-way is justified.

Unifarm, an active farmers organization in Alberta, in a written submission stated it could not support the applications and expressed a concern over the new land use category of "permanent working space".

Mr. Ed Nelson, a director of the Waldron Grazing Co-operative Limited questioned Foothills (Alta.) on matters relating to construction practices, conservation of top soil and revegetation. He agreed that Foothills (Alta.) should have enough right-of-way to do the construction job properly.

VIEWS OF THE DESIGNATED OFFICER

I conclude that Foothills (Alta.) requires the additional lands requested in these applications for efficient construction, maintenance and operation of its proposed pipeline. Foothills (Alta.)'s use of permanent working space on the existing AGTL right-of-way is in my opinion an efficient method of reducing the combined width of right-of-way and will reduce the total new land area which would otherwise be used during pipeline construction.

DECISION

Having considered the evidence and argument presented to me with respect to the three applications of Foothills (Alta.) for leave to take additional lands and the fact that no person appeared to oppose the applications, and having taken into account all matters that appear to it to be relevant, I am satisfied that granting permission to Foothills (Alta.) to take the additional lands requested is necessary for the efficient construction, maintenance and operation of its proposed pipeline. I, therefore, have issued orders authorizing the taking of such lands.

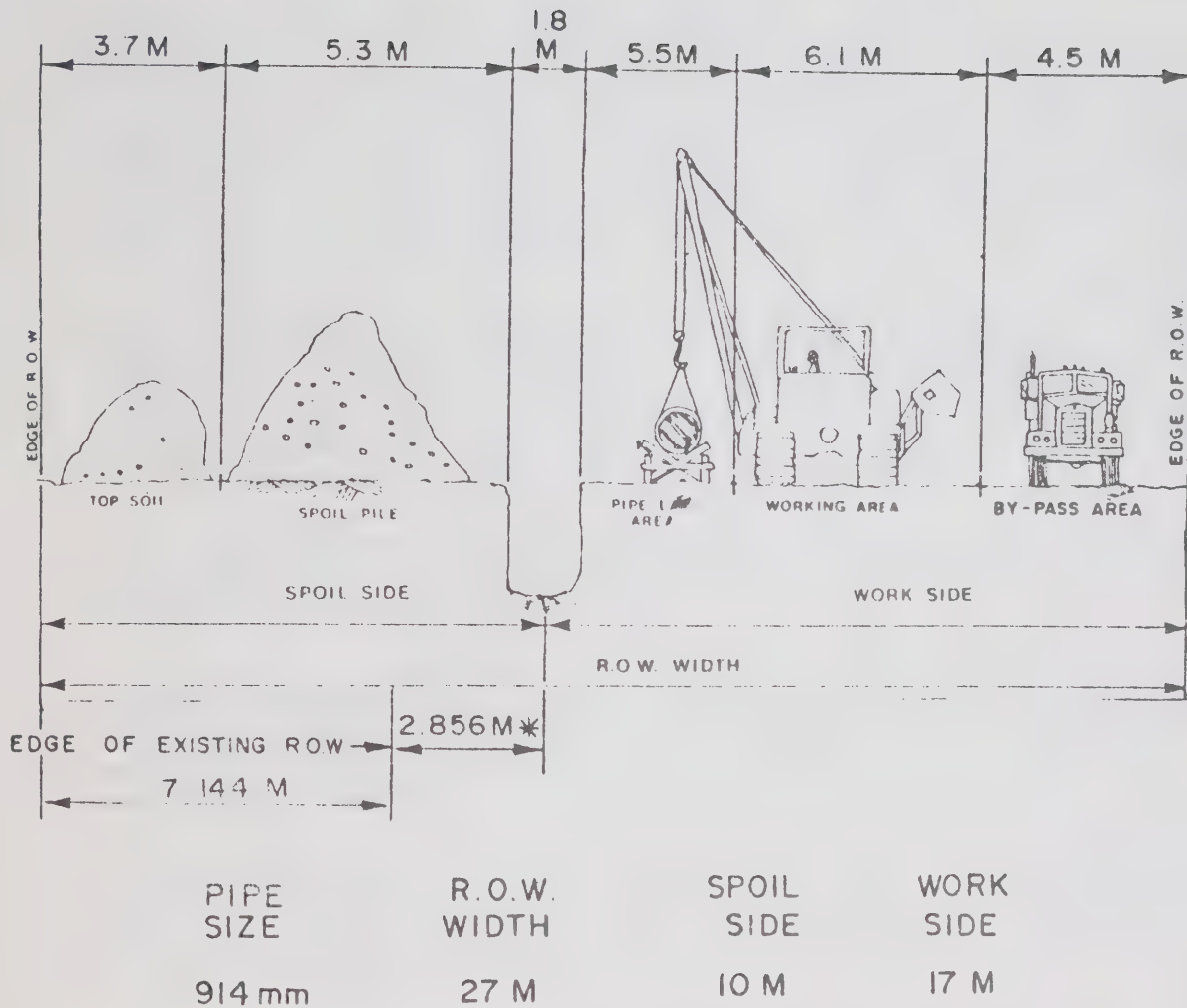
A handwritten signature in dark ink, appearing to read 'W. A. Scotland', is written over a horizontal line.

W. A. Scotland
Designated Officer,
Northern Pipeline Agency.

Calgary, Alberta, June 23rd, 1980

FIGURE NO. 1

(Extracted from Exhibit No. 54)



* JAMES RIVER TO LIVINGSTONE RANGE

DATE	DEC. 1, 78	DRN	A.A.D.	CHKD.	TITLE	ALASKA HIGHWAY PIPELINE PROJECT WESTERN LEG - R.O.W. CONFIGURATION	SK
APPD.		FILE		SCALE	NONE		

SECTION 74 OF THE NATIONAL ENERGY BOARD ACT

74.(1) Where a company at any time requires more ample space than it possesses or may take under section 73, for the efficient construction, maintenance or operation of a pipeline or for constructing or taking any works or measures ordered by the Board, it may apply to the Board for authority to take, without the consent of the owner, the additional lands required for such purposes.

(2) The Board shall set a time for the hearing of the application which shall be sufficient to permit at least twenty-one days notice thereof to be given by the company to the owners or possessors of the additional lands required, and the company shall give notice thereof accordingly and shall, upon such hearing, furnish to the Board copies of such notices, with affidavits of the service thereof.

(3) The company, upon the application, shall also furnish to the Board such plans, profiles and books of reference and additional information as the Board may require.

(4) After the time stated in such notices, and the hearing of such parties interested as may appear, the Board may, in its discretion and upon such terms and conditions as it deems expedient, authorize in writing the taking for the said purposes of the whole or any portion of the lands applied for.

(5) Copies of the authorization of the Board and of the plan, profile and book of reference, certified as such by the Secretary of the Board shall be deposited with the registrars of deeds of the districts or counties in which the lands are situated.

ORDER NO. NPO-1-78

IN THE MATTER OF the Northern Pipeline Act; and

IN THE MATTER OF the delegation by the National Energy Board of certain of its powers, duties and functions under the National Energy Board Act, pursuant to subsection 6(1) of the Northern Pipeline Act.

B E F O R E the Board on Thursday, the 27th day of July, 1978.

WHEREAS the Governor in Council having, by Order in Council P.C. 1978-1631, dated the 11th day of May, 1978, and pursuant to subsection 5(4) of the Northern Pipeline Act, designated William Alexander Scotland, an Associate Vice-Chairman of the Board, as a deputy to the Administrator of the Northern Pipeline Agency, effective the 15th day of May, 1978;

AND WHEREAS William Alexander Scotland, as a deputy to the said Administrator, is the "designated officer" within the meaning of subsection 2(1) of the Northern Pipeline Act;

AND WHEREAS the National Energy Board may, by order, in respect of the pipeline referred to in subsection 2(1) of the Northern Pipeline Act, delegate to the designated officer certain of the powers, duties and functions of the Board under the National Energy Board Act, as more particularly set forth in subsection 6(1) of the Northern Pipeline Act;

AND WHEREAS the National Energy Board considers it necessary and desirable to delegate to the designated officer certain of its powers, duties and functions under the National Energy Board Act in respect to the pipeline referred to in subsection 2(1) of the Northern Pipeline Act;

1. IT IS ORDERED THAT the powers, duties and functions of the National Energy Board under the following provisions of the National Energy Board Act, namely:

subsections 29(2) and 29(4)
subsection 32(2)
section 35

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subsections 36(2) and 36(3)
section 37
section 68
section 74
section 76
section 77

be and the same are hereby delegated to the designated officer, solely in respect of the pipeline referred to in subsection 2(1) of the Northern Pipeline Act.

2. AND IT IS FURTHER ORDERED THAT, for the purpose only of exercising and performing the powers, duties and functions of the Board set forth in paragraph 1 of this Order in respect of the pipeline referred to in subsection 2(1) of the Northern Pipeline Act, the powers of the National Energy Board under the following provisions of the National Energy Board Act, namely:

subparagraphs 7(a) and 7(b)
subsection 10(3)
section 11
section 12
subsection 14(2)
section 16
subsection 17(1)
subsection 20(3)

be and the same are hereby delegated to the designated officer.

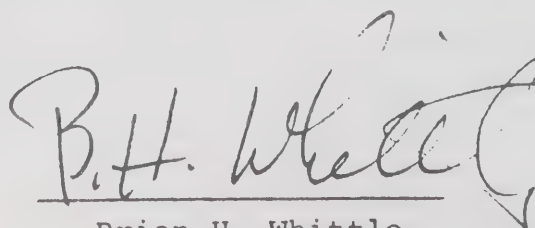
3. AND IT IS FURTHER ORDERED THAT the delegation by the Board of its powers, duties and functions as set out in paragraphs 1 and 2 hereof, shall be effective on the 27th day of July, 1978, in respect of the whole of the pipeline referred to in subsection 2(1) of the Northern Pipeline Act, and shall terminate in respect of each section of the said pipeline on the day on which the Board grants leave to open, pursuant to section 38 of the National Energy Board Act, for each such section of the said pipeline.

NATIONAL ENERGY BOARD
CANADA

NATIONAL ENERGY BOARD

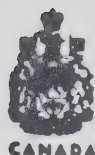
EXAMINED AND CERTIFIED TO BE A TRUE COPY
OF AN ORDER OF THE NATIONAL ENERGY
BOARD. MAY - 9 1980
DATED

SECRETARY, NATIONAL ENERGY
BOARD, OTTAWA, CANADA



Brian H. Whittle
Secretary

NATIONAL ENERGY BOARD



OFFICE NATIONAL DE L'ÉNERGIE

ORDER NO. NP-MH-1-80

IN THE MATTER OF the National Energy Board Act and the Regulations made thereunder; and

IN THE MATTER OF three (3) applications made by Foothills Pipe Lines (Alta.) Ltd. (hereinafter called "the Applicant") for authority to take, without the consent of the owners, certain additional lands required for the construction, maintenance and operation of the pipeline of the Applicant pursuant to the provisions of section 74 of the said Act; and

IN THE MATTER OF ORDER NO. NPO-1-78, dated the 27th day of July, 1978, made by the National Energy Board pursuant to the provisions of subsection 6(1) of the Northern Pipeline Act, whereby the Board did delegate to William Alexander Scotland as Designated Officer, Northern Pipeline Agency, certain of its powers, duties and functions under the National Energy Board Act, including the provisions of section 74 of the said Act, in respect of the pipeline referred to in subsection 2(1) of the Northern Pipeline Act.

Agency File No. 8280.

B E F O R E the Designated Officer on Thursday, the 1st day of MAY, 1980.

UPON reading the applications, one (1) dated the 24th day of April, 1980 and two (2) dated the 29th day of April, 1980 made by the Applicant:

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IT IS ORDERED THAT

1. The Applications will be heard in the "Legion Hall", located at the corner of 4th Street and 53rd Avenue East, in the Town of Claresholm, in the Province of Alberta, on the 2nd, 3rd and 4th days of June, 1980, commencing at the hour of 9:30 A.M. local time each day.
2. Notice of the hearing in the form prescribed by the Designated Officer, Northern Pipeline Agency, as set forth in the Notice attached to and which forms part of this Order shall be published not later than the 9th day of May, 1980 in one issue each of the "Calgary Herald" and the "Calgary Albertan" both in the City of Calgary, and the "Lethbridge Herald" in the City of Lethbridge, all in the Province of Alberta, and as soon as possible in the "Canada Gazette".
3. Notice of the hearing shall forthwith be given by the Applicant by service of a true copy of this Order and of the applications filed upon the Attorney General of the Province of Alberta, the Canadian Federation of Agriculture (at 111 Sparks Street, Ottawa, Ontario), Unifarm Associates (at 9934-106th Street, Edmonton, Alberta) and the owners or possessors of the additional lands required, not less than twenty-one (21) days prior to the date set down for the hearing, and the Applicant shall, upon such hearing, furnish to the Designated Officer, Northern Pipeline Agency, copies of such notices with the affidavits of the service thereof.
4. Any respondent or intervenor intending to oppose or intervene in the applications shall file, on or before the 23rd day of May, 1980, with the Designated Officer, Northern Pipeline Agency, four (4) copies of a written statement containing his/her reply or submission, together with any supporting information, particulars or documents, which shall contain a concise statement of the facts from which the nature of the respondent's or intervenor's interest in the proceedings may be determined, which may admit

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or deny any or all of the facts alleged in the applications, and which shall be endorsed with the name and address of the respondent or intervenor or his/her solicitor to whom communications may be sent. Any respondent or intervenor shall, in addition, serve three (3) copies of his/her reply or submission, and supporting information, particulars or documents upon the Applicant and one (1) copy each upon the Attorney General of the Province of Alberta, the Canadian Federation of Agriculture (at 111 Sparks Street, Ottawa, Ontario) and Unifarm Associates (at 9934-106th Street, Edmonton, Alberta).

5. Any interested party may examine a copy of the applications and the submissions filed therewith at the office of:


Northern Pipeline Agency
4th Floor - Shell Centre
400 Fourth Avenue South West
Calgary, Alberta
T2P 0J4

or at the office of the Applicant's Agent:

The Alaska Project Division of
The Alberta Gas Trunk Line Company Limited
104 Fourth Avenue South East
Calgary, Alberta
(Please contact Michael J. Vaselenak,
Supervisor,
Regulatory Affairs).

Dated at the City of Calgary, in the Province of Alberta, this
1st day of May, 1980.

NATIONAL ENERGY BOARD


W.A. Scotland
Designated Officer,
Northern Pipeline Agency.

NP-MH-1-80

NATIONAL ENERGY BOARD
NOTICE OF HEARING

TAKE NOTICE that pursuant to the National Energy Board Act and the Regulations made thereunder, the Designated Officer, Northern Pipeline Agency, has ordered a hearing to be held in the "Legion Hall", located at the corner of 4th Street and 53rd Avenue East, in the Town of Claresholm, in the Province of Alberta, on the 2nd, 3rd and 4th days of June, 1980, commencing at the hour of 9:30 A.M. local time each day, to hear the applications of Foothills Pipelines (Alta.) Ltd. for leave to take, without the consent of the owners, certain additional lands pursuant to the provisions of section 74 of the Act consisting of:

- (a) "Additional Right-of-Way", containing by admeasurement approximately eight hectares (about 20 acres),
- (b) "Permanent Working Space", containing by admeasurement approximately twenty-four hectares (about 60 acres), and
- (c) "Temporary Working Space", containing by admeasurement approximately 0.2 of a hectare (about half an acre),

in the area between a "Provincial Park", known as "Chain Lakes Park", and a navigable water, known as "Old Man River", extending from a point at or near the north limit of the North East Quarter of Section 22, Township 14, Range 2, to a point at or near the northerly bank of said "Old Man River", situated in part of the South East Quarter of Section 11, Township 10, Range 2, all West of the Fifth Meridian, in the Province of Alberta,

required for the efficient construction, maintenance and operation of the pipeline referred to in subsection 2(1) of the Northern Pipeline Act and as more particularly described in the said applications.

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AND THE DESIGNATED OFFICER, NORTHERN PIPELINE AGENCY, HAS FURTHER ORDERED THAT:

1. Any respondent or intervenor intending to oppose or intervene in the applications shall file, on or before the 23rd day of May 1980, with the Designated Officer, Northern Pipeline Agency, four (4) copies of a written statement containing his/her reply or submission, together with any supporting information, particulars or documents, which shall contain a concise statement of the facts from which the nature of the respondent's or intervenor's interest in the proceedings may be determined, which may admit or deny any or all of the facts alleged in the applications, and which shall be endorsed with the name and address of the respondent or intervenor or his/her solicitor to whom communications may be sent. Any respondent or intervenor shall, in addition, serve three (3) copies of his/her reply or submission, and supporting information, particulars or documents upon the Applicant and one (1) copy each upon the Attorney General of the Province of Alberta, the Canadian Federation of Agriculture (at 111 Sparks Street, Ottawa, Ontario) and Unifarm Associates (at 9934-106th Street, Edmonton, Alberta).

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Calgary, Alberta
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or at the office of the Applicant's Agent:

- 3 -

The Alaska Project Division of
The Alberta Gas Trunk Line Company Limited
104 Fourth Avenue South East
Calgary, Alberta,
(Please contact Michael J. Vaselenak
Supervisor,
Regulatory Affairs).

DATED at the City of Calgary, in the Province of Alberta, this
1st day of May, 1980.

NATIONAL ENERGY BOARD

"W. A. Scotland"
W. A. Scotland
Designated Officer,
Northern Pipeline Agency.

The Alaska Project Division of
the Alberta Gas Trust Ltd. Company Limited
104 Fourth Avenue South East
Calgary, Alberta
(Phone contact Michael J. Veronique)
Superintendent
Regulatory Affairs

DATED at the City of Calgary, in the Province of Alberta, this
1st day of May, 1980.

